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ALEXANDER L. STEVAS,
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84-936

NUMBER _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER 1984 TERM

****

FLOYD M. BANKS,
Petitioner

VS

THE STATE OF NORTH CAROLINA,
Respondent

****

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA

****

PETITION FOR CERTIORARI

Counsel for Petitioner:

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The petitioner respectfully petitions the Court, pursuant to Rule 21 of the Rules of the Supreme Court of the United States, for a writ of certiorari in regards to the following:

(a) The questions presented for review are as follows:

1. Did the trial Court commit reversible error in consolidating for trial five separate bills of indictment for the criminal offense of conspiracy when, if there was a conspiracy at all, there was only one conspiracy which resulted in multiple acts of larceny in violation of the single Statute, North Carolina General Statute 14-72, which is the Statute defining the crime of larceny?

2. Did the action of the trial Court in consolidating for trial five counts for the same act of conspiracy violate the constitutional protection for the defendant against double jeopardy and upon conviction does this serve to punish the defendant multiple times for the same single continuing act of conspiracy?

(b) The caption of this case in the Supreme Court of the United States contains the names of all parties.

(c) A table of contents and a table of authorities cited.

(d) The North Carolina Court of Appeals rendered its decision in this case on the 20th day of March, 1984 and is reported according to Rule 30 (e) of the North Carolina Rules of Appellate Practice without opinion in 67 NC App 358, 314 SE 2d 146. The action of the North Carolina Supreme Court dismissing the appeal on motion of the Attorney General and denying petition for discretionary review was entered by Mr. Justice Frye for the Court on the 24th day of September, 1984 and notice of such action certified to the North Carolina Court of Appeals on the 25th day of September, 1984 and copy of the Supreme Court judgment and the notice of certification to the North Carolina Court of Appeals was received by counsel for the defendant on the 26th day of September, 1984.

(e) The defendant envokes the jurisdiction of the Supreme Court of North Carolina under the terms and provisions of the Fifth and Fourteenth Amendments to the Constitution of the United States and Article 1, Section 17 of the Constitution of the State of North Carolina.

(f) The constitutional provisions which the case involves are as follows: Amendment V to the Constitution of the United States: "No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a Grand Jury except in cases arising in the land or naval forces or in the militia when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation."

Constitution of the United States, Amendment XIV, Section 1. "All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

(g) A concise statement of the case containing the facts material to the consideration of the questions presented is as follows:

The defendant, Floyd M. Banks, was tried in the Beaufort County Superior Court in Washington, North Carolina on five separate bills of indictment with each indictment alleging a conspiracy to commit larceny on a separate date. Case No. 82 CrS 8100 alleged that the defendant unlawfully, willfully and feloniously did

conspire with Johnny E. Frizzell to commit the felony of larceny, G. S. 14-70 and G. S. 14-72 against Singer Furniture Company, Chocowinity, North Carolina on the 7th day of December, 1982. Case number 82 CrS 8102 alleged that the defendant unlawfully, willfully and feloniously did conspire with Johnny E. Frizzell to commit the felony of larceny, G. S. 14-70, G. S. 14-72 against Singer Furniture Company, Chocowinity, North Carolina on the 3rd day of December, 1982. Case number 82 CrS 8113 alleged that the defendant did unlawfully, willfully and feloniously conspire with Johnny E. Frizzell to commit the felony of larceny, G. S. 14-70, G. S. 14-72 against Singer Furniture Company, Chocowinity, North Carolina on the 5th day of November, 1982. Case number 82 CrS 7674 alleged a similar offense of conspiracy to commit larceny with the same person against the same company on the 10th day of December, 1982 and case number 82 CrS 8108 alleged a similar offense to commit conspiracy with the same person against the same company on November 23, 1982. All of the offenses were alleged to have been committed against Singer Furniture Company in Chocowinity, North Carolina where both the defendant and the alleged co-conspirator were employees.

The cases came on for trial at the March 21, 1983 criminal session of the General Court of Justice, Superior Court Division for Beaufort County, with the Honorable James R. Strickland, Judge presiding. Prior to the trial the defendant objected to the Court subjecting the defendant to multiple trials for the single conspiracy from which multiple criminal acts occurred. However, the Court overruled the motion and the trial proceeded and the defendant was found guilty in cases 82 CrS 8113 and 82 CrS 8102 and 82 CrS 8100. The defendant was found not guilty in cases 82 CrS 7674 and 82 CrS 8108. In each case in which the defendant was convicted, he was sentenced to serve one year and each term was ordered to be

served consecutively giving the defendant a total of three years active prison sentence for what the defendant contends is one criminal act of conspiracy resulting in multiple violations of the same statute with no additional statutes or elements of proof being required.

The principal prosecuting witness in this case was one Johnny Frizzell. Floyd Banks had been an employee of Singer Manufacturing Company in Chocowinity, North Carolina for quite a number of years. He had an excellent work record and in general enjoyed a fine reputation in the community in which he lived. Johnny Frizzell, who had demonstrated his effectiveness as a fraud and a cheat by having been convicted of insurance fraud, embezzlement, worthless checks and other similar or kindred type offenses, was the principal witness and, indeed, the only witness against the defendant.

The witness Frizzell testified that he and Floyd Banks conspired from sometime in early November, 1982 through December 10, 1982 to relieve Singer Manufacturing Company of items of furniture produced by it. The conspiracy as alleged occurred in early November and continued through until the final criminal act under the conspiracy on December 10, 1982. The jury, strangely enough, found the defendant innocent of two of the offenses in which the State produced physical evidence that there was actually some furniture removed from the premises of Singer Manufacturing Company. The jury found the defendant guilty of three offenses for which Singer Manufacturing Company could not prove or demonstrate a loss. The principal witness for the State, Johnny Frizzell, even in his testimony fails to establish an actual loss by Singer Manufacturing Company for the three offenses for which the defendant was convicted.

The witness, Johnny Frizzell, through his testimony attempted to establish that he and the defendant discussed from time to time that they would relieve Sin-

ger Manufacturing Company of certain items of furniture which the manufacturing company produced. The defendant contended from the very beginning of the trial that if there was a conspiracy at all, it was a single one and that the fact that there were multiple offenses of larceny which might have been committed pursuant to the conspiracy nevertheless did not convert it to multiple offenses of conspiracy, but there was only one conspiracy from which several criminal acts were committed. This contention has been overruled by the trial Court, the North Carolina Court of Appeals, and now the North Carolina Supreme Court and the Court of last resort for the defendant is the United States Supreme Court.

(h) The federal questions sought to be reviewed here were raised initially in the trial Court when the matters came on for trial before Strickland, Judge presiding over the March 21, 1983 Criminal Session of the General Court of Justice, Superior Court Division for Beaufort County. The federal constitutional questions were raised by motion during the trial in the Court and they were summarily dismissed by the Court. They were raised by being set out in essentially the same form as they are in this petition in the North Carolina Court of Appeals and were barely paid lip service in the opinion of the North Carolina Court of Appeals. The North Carolina Supreme Court attached even less significance to the federal constitutional questions than the North Carolina Court of Appeals.

The method or manner of raising the federal questions sought to be reviewed is as follows:

"Prior to the taking of any evidence in this case, counsel for the defendant objected to the multiple charges of conspiracy on the ground that they covered only one conspiracy but several illegal acts of larceny committed as a result of one single conspiracy, consequently, the defendant should be tried only on one count."

"This objection was overruled and the Court ordered that all five counts of conspiracy be consolidated for trial." This is defendant's Exception Number 1, Record on Appeal page 10.

Assignment of Error No. 1. The defendant assigns as error the following: To the action of the Court in consolidating five separate charges of conspiracy to commit larceny on the grounds that there was only one conspiracy and continuing course of conspiratorial conduct even though it may have resulted in several acts of larceny pursuant to such conspiracy. This is defendant's Exceptions Nos. 1 and 2, Record page 10, and also Exception No. 32, Record page 53 and Exception No. 41, Record page 67.

Assignment of Error No. 14. To the action of the Court in sentencing the defendant on three separate counts of conspiracy when in fact only one conspiracy is shown. This is defendant's Exception No. 42, Record page 91 and Exception No. 43, Record page 92 and Exception No. 44, Record page 93.

In the defendant's brief based upon the record on appeal, the defendant submitted the following questions for the Court which presented federal constitutional questions:

1. The Court committed prejudicial error in consolidating for trial five separate bills of indictment of the criminal offense of conspiracy when, if there was a conspiracy at all, there was only one conspiracy which resulted in multiple acts of larceny. Defendant Appellant's brief, page 4.

The consolidation for trial of several counts of the same conspiracy violates the constitutional protection for the defendant against double jeopardy and serves to punish him several times for the same single continuing act. Defendant Appellant's Brief, page 5.

The North Carolina Court of Appeals in its opinion rendered on March 20, 1984 at 8:10 A.M. treats the federal questions raised as follows:

"Defendant first argues that the trial Court committed 'reversible error in consolidating for trial five separate bills of indictment for the criminal offense of conspiracy when, if there was a conspiracy at all, there was only one conspiracy which resulted in multiple acts of larceny.' To resolve this issue, we look to the nature of the conspiracy. 'If there is one overall agreement among the various parties to perform different functions in order to carry out the objectives of the conspiracy, the agreement among all the parties constitutes a single conspiracy.' 16 Am. Jur. 2d, Conspiracy, 11, at 227 (1979)."

"In this case, the State's evidence showed that the defendant and Johnny Frizzell made separate agreement for each time there was to be a theft of furniture. On the three occasions in question, defendant either told or showed Frizzell what furniture to pick up, when to pick it up, where to deliver it, and how much Frizzell was to get for his participation in the larcenies. Defendant's separate discussions with Frizzell concerning the timing of the thefts, the quality and quantity of the goods, and the pay-off, show that the conspirators planned for only one theft at a time, and that each conspiracy had only a single theft as its objective. Thus, there was not 'one overall agreement' but rather, three separate agreements, each having a single purpose. We find no error in the trial Court's decision to consolidate for trial five separate bills of indictment for conspiracy."

"In a closely related assignment of error, defendant also contends that trying him on five separate conspiracy charges constituted double jeopardy and punished him several times for the same act. We summarily reject that argument. We re-emphasize that prior to each theft, Johnny Frizzell and the defendant discussed specifics of that particular theft. The discussion regarding the thefts included references to the items to be taken, the time of the theft, and the location where the stolen property was to be stored. These dis-

cussions were not in general terms, but rather, were limited only to the upcoming specific theft. Thus, each agreement constituted a separate criminal conspiracy, and the defendant could properly be tried and sentenced separately for each offense without being stripped of his constitutional protection against double jeopardy." Language quoted from the Court of Appeals opinion filed March 20, 1984.

The North Carolina Attorney General filed a motion to dismiss the appeal on the grounds that there was not a substantial federal question and in a judgment dismissing the appeal on motion of the attorney and denying petition for discretionary review, the Supreme Court of North Carolina entered the following with reference to the motion to dismiss the appeal: "Allowed by order of the Court in conference this 28th day of August, 1984." /s/ Frye, J. for the Court.

The ruling by the Supreme Court of the State of North Carolina dismissing the appeal on motion of the Attorney General and denying the petition for discretionary review was certified to the defendant's counsel on the 25th day of September, 1984 and received by him on the 26th day of September, 1984.

(i) This is not the seeking of the review of a judgment of a federal court.

(j) This is an application for review on writ of certiorari which is not a matter of right but of judicial discretion where a State Court of Appeals has decided an important question of federal law which appears to be in conflict with applicable decisions of the United States Supreme Court and other federal courts.

The constitutional issues arise from questions number 1 and 2 presented by the appeal which are as follows: (1) Did the trial Court commit reversible error in consolidating for trial five separate bills of indictment of the criminal offense of conspiracy when, if there was a conspiracy at all, there was only one conspiracy which resulted in multiple acts of larceny? (Assignment of Error No. 1, Exceptions Nos. 1 and 2, Record

page 10; Exception No. 32, Record page 53; Exception No. 41, Record page 67). (2) Did the consolidation for trial of several counts of the same conspiracy violate the constitutional protection for the defendant against double jeopardy and does it serve to punish him several times for the same single continuing criminal act? (Assignment of Error No. 14, Exception No. 41, Record page 10; Exception No. 43, Record page 113; Exception No. 44, Record page 114).

The opinion of the Court of Appeals holds that there was not "one overall agreement" but rather three separate agreements, each having a single purpose and the Court finds no error in that decision to consolidate for trial five separate bills of indictment for conspiracy. The opinion also contains the following language: "In a closely related assignment of error, defendant also contends that trying him on five separate conspiracy charges constituted double jeopardy and punished him several times for the same act. We summarily reject that argument."

The defendant appellant contended that there was only one conspiracy to commit larceny and North Carolina has only one statutory offense of larceny. Therefore, the gravamen of the offense is the illegal agreement to commit an illegal act where there be one or more identical illegal acts committed and each time an offense of larceny is shown, there is not an additional element of each one of the offenses because the elements of the offense of larceny remain the same regardless of how many offenses might have been committed and as a result of the agreement or conspiracy to commit the illegal acts.

The Court of Appeals should not be permitted to treat a serious constitutional question in such a cavalier manner and then attempt to bury it pursuant to Rule 30 (e). Such opinion and judgment does violence to the constitutional sections of the federal constitutional and the constitution of the State of North Carolina previously mentioned, and also flies directly in the

face of several leading and long-standing judicial precedents as set forth by the Supreme Court of the United States. ALBERNAZ VS. UNITED STATES, 450 US 333, 67 L. Ed. 2d 275, 101 S. Ct. 1137 (1981) overruling UNITED STATES VS. RUIGOMEZ, 576 F. 2d 1149 (Fifth Circuit). Also, it flies in the face of the leading case on the authorization of cumulative punishment, BLOCKBURGER VS. UNITED STATES, 284 US 299 at page 304, 76 L. Ed. 306, 52 S. Ct. 180, and BRAVERMAN VS. UNITED STATES, 317 US 49, 87 L. Ed. 23, 63 S. Ct. 99.

The applicable rule as set forth by the United States Supreme Court in the BLOCKBURGER case is as follows: ". . .where the same act or transaction constitutes a violation of two distinct statutory provisions (emphasis supplied) the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of a fact which the other does not." This rule was reiterated in the case of BROWN VS. OHIO, 432 US 161 at page 166, 53 L. Ed. 1187, 87 S. Ct. 2221. Also, in the case of IANNELI VS. UNITED STATES, 420 US 770 at page 785, note 17, 43 L. Ed. 2d 616, 95 S. Ct. 1284, it was stated: "The test articulated in BLOCKBURGER (Supra) serves a generally similar function of identifying congressional intent to impose separate sanctions for multiple offenses arising in the course of a single act or transaction. In determining whether separate punishment might be imposed, BLOCKBURGER requires that Courts examine the offenses to ascertain 'whether each provision requires proof of a fact which the other does not.'"

Then the old BRAVERMAN case is distinguished and reaffirmed. It is stated: "Since the single continuing agreement which is the conspiracy here thus embraces its criminal objects, it differs from successive acts which violate a single penal statute and from a single act which violates two statutes. The single agreement is the prohibited conspiracy and however diverse its objects, it violates but a single statute. . ."

The collection of indictments in this case alleges one criminal conspiracy. It is the single criminal conspiracy that results in the several violations of the same criminal statute and, therefore, this case meets the BRAVERMAN, BLOCKBURGER and ALBERNAZ tests and the judgment of the Court of Appeals is not only erroneous, but should be reversed on federal and state constitutional principles.

Respectfully submitted.

WILKINSON & VOSBURGH

BY: S/ JAMES R. VOSBURGH

JAMES R. VOSBURGH, COUNSEL
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CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing petition for certiorari upon the North Carolina Attorney General by depositing a copy of same in the United States mail, postage prepaid, addressed to him as follows: P. O. Box 629, Raleigh, North Carolina 27611.

This 6 day of November, 1984.

S/ JAMES R. VOSBURGH

JAMES R. VOSBURGH

APPENDIX

NO. 832SC850

NORTH CAROLINA COURT OF APPEALS

Filed: 20 March 1984

STATE OF NORTH CAROLINA	Beaufort County Nos. 82CRS7674 82CRS8100 82CRS8102 82CRS8108 82CRS8113
v.	
FLOYD M. BANKS	

Appeal by defendant from Strickland, Judge. Judgment entered 24 March 1983 in Superior Court, Beaufort County. Heard in the Court of Appeals 9 February 1984.

Attorney General Edmisten, by Special Deputy Attorney General Charles J. Murray, for the State.

Wilkinson & Vosburgh, by James R. Vosburgh, for defendant appellant.

BECTON, Judge.

The defendant, Floyd M. Banks, was tried on five separate bills of indictment, each charging the crime of feloniously conspiring to commit larceny on a separate date. The defendant was found not guilty of two counts, but was found guilty of the remaining three counts. Defendant was sentenced to serve three consecutive one-year terms. He appeals.

Johnny Frizzell, the principal State's witness, testified that, beginning in early November 1982, he conspired with the defendant to commit the offense of larceny from Singer Manufacturing Company in Chocowinity, North Carolina by stealing furniture after hours, when the plant was shut down. Frizzell further testified that he, and others working with him, com-

mitted five separate acts of larceny on separate dates between 5 November and 10 December 1982.

On appeal, defendant contends that the trial court erred in (1) consolidating the five separate bills of indictment for trial; (2) failing to grant defendant's motion for nonsuit; (3) failing to give defendant's requested charge; (4) making certain evidentiary rulings; and (5) denying defendant's motion for appropriate relief based on newly discovered evidence. For the reasons that follow, we find no error in this trial.

I

Defendant first argues that the trial court committed "reversible error in consolidating for trial five separate bills of indictment for the criminal offense of conspiracy when, if there was a conspiracy at all, there was only one conspiracy which resulted in multiple acts of larceny." To resolve this issue, we look to the nature of the conspiracy. "If there is one overall agreement among the various parties to perform different functions in order to carry out the objectives of the conspiracy, the agreement among all the parties constitutes a single conspiracy." 16 Am. Jur. 2d Conspiracy §11, at 227 (1979).

In this case, the State's evidence showed that the defendant and Johnny Frizzell made separate agreements for each time there was to be a theft of furniture. On the three occasions in question, defendant either told or showed Frizzell what furniture to pick up, when to pick it up, where to deliver it, and how much Frizzell was to get for his participation in the larcenies. Defendant's separate discussions with Frizzell concerning the timing of the thefts, the quality and quantity of the goods, and the pay-off, show that the conspirators planned for only one theft at a time, and that each conspiracy had only a single theft as its objective. Thus, there was not "one overall agreement," but rather, three separate agreements, each having a single purpose. We find no error in the trial court's decision to

consolidate for trial five separate bills of indictment for conspiracy.

In a closely related assignment of error, defendant also contends that trying him on five separate conspiracy charges constituted double jeopardy and punished him several times for the same act. We summarily reject that argument. We re-emphasize that prior to each theft, Johnny Frizzell and the defendant discussed specifics of that particular theft. The discussion regarding the thefts included references to the items to be taken, the time of the theft, and the location where the stolen property was to be stored. These discussions were not in general terms, but rather, were limited only to the upcoming specific theft. Thus, each agreement constituted a separate criminal conspiracy, and the defendant could properly be tried and sentenced separately for each offense without being stripped of his constitutional protection against double jeopardy.

II

Arguing that the trial court committed error in failing to dismiss all bills of indictment at the close of the evidence, the defendant points out in his brief that: (1) he "was the only person charged with the crime of conspiracy and one cannot be convicted of conspiring with himself;" and (2) "[i]t was never actually established that there was anything actually physically removed from the Singer plant site on the occasion of the three offenses for which the defendant was convicted." Defendant's statements are not dispositive of the nonsuit issue.

> The test of the sufficiency of the evidence in a criminal case is whether there is substantial evidence of all elements of the offense charged so any rational trier of fact could find beyond a reasonable doubt that defendant committed the offense. [Citations omitted.]

State v. Thompson, 306 N.C. 526, 532, 294 S.E.2d 314, 318 (1982). The offense of "conspiracy is the unlawful concurrence of two or more persons in a . . . scheme — the combination or agreement to do an unlawful [act]. . ." State v. Horton, 275 N.C. 651, 656, 170 S.E.2d 466, 469 (1969), cert. denied 398 U.S. 959, 26 L.Ed.2d 545, 90 S.Ct. 2175 (1970) (quoting State v. Gallimore, 272 N.C. 528, 532, 158 S.E.2d 505, 508 (1968)). The testimony of Johnny Frizzell set out above, sufficiently establishes three different agreements between the defendant and Frizzell to commit the offense of larceny on three different occasions. Therefore, the trial court did not err in failing to dismiss the case.

Moreover, we point out that defendant's indictments specifically alleged that defendant "unlawfully, willfully, and feloniously did conspire with Johnny E. Frizzell to commit the felony of larceny" in the three cases for which he was convicted. The law is clear. Although at least two persons are required to create a conspiracy, there is no requirement that more than one person be prosecuted for the conspiracy. See State v. Littlejohn, 264 N.C. 571, 142 S.E.2d 1320 (1965); 4 Wharton's Criminal Law § 733, at 552-53 (14th ed. 1981). Further, "[a]s soon as the union of wills for the unlawful purpose is perfected, the offense of conspiracy is complete." State v. Knotts, 168 N.C. 173, 188, 83 S.E. 972, 979 (1914). "No overt act is necessary to complete the crime of conspiracy." State v. Davenport, 227 N.C. 475, 494, 42 S.E.2d 686, 699 (1947). Finally, since the unsupported testimony of a co-conspirator is sufficient to uphold a verdict, it follows that the unsupported testimony of a co-conspirator is sufficient to defeat a motion to dismiss. State v. Bindyke, 288 N.C. 608, 220 S.E.2d 521 (1975).

III

Defendant next argues that the trial court committed error in failing to charge, as requested in defendant's written special "Request for Jury Instructions." Some of the requested instructions, while correctly stating

the law, were not fully applicable to the facts of this case. For example, Frizzell gave direct testimony based on his own personal knowledge, about defendant's statements and actions. Frizzell's testimony did not involve statements or actions of a co-conspirator against another co-conspirator. More importantly, a trial judge is not required to give instructions in the language requested by any of the parties.

We have viewed the entire charge, and the instructions given by the trial court were clear and proper. The trial court gave instructions relating to witnesses interested in the outcome of the trial, witnesses testifying pursuant to an agreement with the prosecution, witnesses who have been convicted of previous offenses, and witnesses who are co-conspirators. As stated by the State in its brief, those instructions collectively insured that the jury was aware of their responsibility to scrutinize the testimony of Johnny Frizzell.

IV

Having thoroughly reviewed defendant's remaining assignments of error, we summarily reject defendant's challenge to the evidentiary rulings of the trial court and to the trial court's failure to grant defendant's motion for appropriate relief.

In the trial of this case, we find

No error.

Judges ARNOLD and WHICHARD concur.

Report according to Rule 30(e).

No. 176P84 SECOND DISTRICT

SUPREME COURT OF NORTH CAROLINA

****

STATE OF NORTH CAROLINA	)	JUDGMENT DISMISSING APPEAL ON MOTION OF ATTORNEY GENERAL AND DENYING PETITION FOR DISCRETIONARY REVIEW (832SC850)
V	)	
FLOYD M. BANKS	)	

****

Upon consideration of the Defendant's notice of appeal from the North Carolina Court of Appeals, filed in this matter pursuant to G.S. 7A-30, and the Attorney General's motion to dismiss the appeal for lack of substantial constitutional question and upon consideration of the Defendant's petition for discretionary review of the decision of the North Carolina Court of Appeals, pursuant to G.S. 7A-31, the following order was entered and is hereby certified to the North Carolina Court of Appeals: Attorney General's motion to dismiss the appeal is

"Allowed by order of the Court in conference, this the 28th day of August 1984.

s/ Frye, J.
For the Court"

Defendant's petition for discretionary review is

"Denied by order of the Court in conference, this the 28th day of August 1984.

s/ Frye, J.
For the Court"

Therefore, it is considered and adjudged further that Defendant do pay the sum of Nine and no/100 Dollars ($9.00) and that execution issue therefor.

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 21st day of September 1984.

S/ J. GREGORY WALLACE

J. GREGORY WALLACE
Clerk of the Supreme Court

Copy to:
North Carolina Court of Appeals
Wilkinson & Vosburgh,
Attorneys at Law
Mr. Charles J. Murray,
Special Deputy Attorney General
Mr. Thomas S. Payne, III,
Clerk of Superior Court
Mr. William C. Griffin, Jr.,
District Attorney General

NO. 832SC850
NORTH CAROLINA COURT OF APPEALS

****

STATE OF
NORTH CAROLINA

V

County: Beaufort
Number: 82CRS7674

FLOYD M. BANKS

****

Appeal to review the decision of the Court of Appeals filed on March 20, 1984 was dismissed and petition for Discretionary Review was denied by order of the Supreme Court of North Carolina in Conference on the 28th day of August, 1984 and same has been certified to the North Carolina Court of Appeals:

IT IS THEREFORE CERTIFIED to the Clerk of Superior Court Beaufort County that the Supreme Court of North Carolina has dismissed the Appeal and denied the petition for Discretionary Review in this cause.

Witness my hand and official seal this the 25th day of September, 1984.

S/ FRANCIS E. DAIL

Clerk of Court of Appeals

S/ JEANNE STAKEMAN

by Deputy Clerk

XC: James R. Vosburgh
Charles J. Murray,
Special Deputy Attorney General

COA-52B (Revised 6-1-82)